



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/298,245	04/23/1999	JAU-FEI CHEN	13246.0007	1827

21999 7590 01/08/2003

KIRTON AND MCCONKIE
1800 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
P O BOX 45120
SALT LAKE CITY, UT 84145-0120

EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
----------	--------------

1615

DATE MAILED: 01/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/298,245

Applicant(s)

CHEN, JAU-FEI

Examiner

Lakshmi S Channavajjala

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

1. Receipt of change of address, dated 7-5-02; request for extension of time, request under CFR 1.114 and preliminary amendment dated 11-26-02 is acknowledged.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-26-02 has been entered.

Status of Claims

3. Claims 43-64 are pending in the instant application.

4. Claim 42 recites a skin care composition containing cactus fruit extract and a natural skin supplement. Claim 43 and 44 recite the skin supplement as a herbal stimulant, claim 45 recites specifically ginseng root and claim 46 recites ginseng berry extract. Claims 47-50 recite the composition in various forms i.e., masque, cleanser etc. Claim 51 specifically recites cactus fruit and ginseng berry extract. Claims 53 and 53 recite the specific cactus; claim 54-57 recites the functional limitations of cactus fruit extract. Claims 59-60 recite botanical herb and in particular ginseng root. Claim 61 requires an additional botanical extract. Claim 62 is a skin cream. Claim 63 is a body treatment composition comprising cactus fruit extract and a botanical ingredient. Claim 64, dependent upon 63 further recites ginseng berry extract.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 43 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 2703189 (DE 189).

DE '189 discloses a skin cream composition containing cactus fruit extract from *Opuntia reginae*, an extract of *Strelicia* and other natural ingredients. The composition is useful for combating skin wrinkles, especially in the facial and neck region. The natural supplements of DE '189 read on component b) of claim 43. The functional limitation recited in claim 63 (cactus fruit extract, when applied to the skin delivers vitamins to the skin, moisturizes and promotes healing of wounds) is inherent to the cactus fruit extract of DE '189.

Applicants requested a translation of the above document, which is not available at this time.

However, the enclosed abstract fully supports the above rejection because the claimed elements are clearly recited in the abstract.

Claim Rejections - 35 USC § 103

6. Claims 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over De 2703189.

De '189 discussed above teaches skin cream composition containing cactus fruit extract for treating skin wrinkles. Further, DE '189 teaches incorporating other natural components such as *Strelicia* in the skin care composition for applying to face and neck regions. Although DE '189 does not specifically teach the claimed facial cleanser, masque or body wash composition,

Art Unit: 1615

De '189 teaches Cactus fruit extract for treating skin wrinkles. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use the cactus fruit extract of DE '189 the conventional skin care compositions such as masque, body wash (such as soap) or facial cleanser with an expectation to provide wrinkle treatment or prevent wrinkles on the skin.

7. Claims 43-62 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over De 2703189 in view of Maybeck et al (US 5,663,160, hereafter Maybeck).

DE '189, Maybeck teaches, discussed above, fails to teach a second herb, in particular the root or berry extract of ginseng, in the composition.

Maybeck teaches a cosmetic or dermatological composition comprising a saponin as an active ingredient (abstract). In particular, Maybeck teaches saponin of ginsengoside type, derived from Panax (ginseng) rhizomes (col. 1). Maybeck teaches that the plant extract can be included in cosmetic and dermatological compositions (lines bridging columns 2-3), for protecting/restoring/strengthening of skin, for regenerating the epidermis or for preventing skin wrinkles (col. 6, lines 10-14 and lines 20-). Further, Maybeck teaches that the composition containing the saponins can be in the form of a gel, cream, lotion or anti-wrinkle emulsion (col. 6, lines 15-20 and examples in cols. 7-10).

It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to combine the saponins from ginseng extract of Maybeck with the cactus fruit extract containing skin care composition of DE '189 because Maybeck et al teaches that saponins obtained from Panax (ginseng) are very effective in preventing or treating wrinkles and DE '189

Art Unit: 1615

also teaches a skin wrinkle treating composition. Thus, both DE '189 and Maybeck are analogous and accordingly it would have been obvious for as skilled artisan to combine analogous teachings with an expectation to achieve enhanced treatment of skin wrinkles with a combination of cactus fruit extract and saponins from ginseng extract. Although Maybeck does not specifically teach ginseng berry extract, one of an ordinary skill in the art would have expected to achieve the same activity with saponins whether irrespective of their source i.e., ginseng roots (Maybeck) or berries. Accordingly, it is the position of the examiner that extracting saponins from ginseng roots or berries would have been within the scope of a skilled artisan.

Response to Remarks

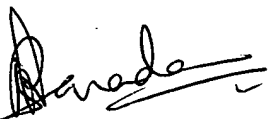
Applicants stated in the remarks section that the present RCE filing is in anticipation of obtaining translations for previously cited foreign documents. However, as explained above, the abstract of DE '189 fully supports the rejected claims.

Art Unit: 1615

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 703-308-2438. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



Lakshmi S Channavajjala
Examiner
Art Unit 1615
January 8, 2003